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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 360.

W. H. CARFER, SHERIFF OF WOOD COUNTY, WEST VIRGINIA, APPELLANT,

vs.

C. T. CALDWELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF WEST VIRGINIA.

FILED JULY 27, 1905.

(19,862.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 28, 1905.

1 Be it remembered, that, heretofore, to-wit: at a circuit court of the United States for the northern district of West Virginia, continued and held at Wheeling, in said district, on the 5th day of April, 1905, the following order was made and entered of record, to-wit:

Ex Parte CHARLES T. CALDWELL.

This day Charles T. Caldwell presented in open court his petition, duly cer-ified, alleging among other things, that he is unlawfully restrained of his liberty and detained in the custody of W. H. Carfer, sheriff of Wood county, under and by virtue of an alleged writ of attachment, alleged to have been issued by one James Seaman, chairman of an alleged committee of investigation now sitting at Charleston, West Virginia; said alleged writ having been issued on the 31st day of March, 1905, and addressed to the sheriff of Wood county, a copy of which writ is filed with the petition of the said Caldwell, and praying a writ of *habeas corpus* for the production of the body of the said Caldwell before this court, and that the day and cause of his detention may be inquired into.

It is therefore ordered that the writ of *habeas corpus* prayed for in the said petition do issue, directed to W. H. Carfer, sheriff of Wood county, commanding him in the name of the United States of America, to produce before this court the body of the said Caldwell, on the 20th day of April, 1905, at the Federal court room in the city of Clarksburg, West Virginia, together with the day and the cause of his arrest and detention. And it appearing from the face of said writ issued by said Seaman that same is void, it is further ordered that until the said day the said W. H. Carfer, sheriff as aforesaid, and all other persons or officers acting or pretending to act by, through or under the authority of the said writ, be and the same are hereby commanded, ordered and directed to cease and refrain from attempting to exercise any authority or restraint over the said Caldwell. It is further ordered that a copy of this
2 order duly certified and served upon the said Carfer, sheriff, shall be in lieu of the regular writ of *habeas corpus*.

Petition.

(Filed April 5, 1905.)

In the Circuit Court of the United States for the Northern District of West Virginia.

To the honorable judges of said court:

Your petitioner, Charles T. Caldwell, respectfully represents unto your honors that he has been attached and arrested by the sheriff of Wood county, West Virginia, and is now unlawfully detained in

the custody of said sheriff, under and by virtue of a certain order to the said sheriff directed, signed by James Seaman, chairman of an alleged investigating committee appointed by the house of delegates of the legislature of West Virginia, or by the speaker thereof, which appointment is alleged to have been made by the late speaker of the house of delegates of the legislature of West Virginia; and which said writ is dated on the 31st day of March, 1905.

Your petitioner further respectfully represents that he is a citizen and resident of and in the county of Wood and State of West Virginia, and was arrested under the alleged writ of attachment; a copy of which writ is filed herewith as part hereof, as Exhibit "A" which writ shows upon its face all the alleged grounds and reasons for its issuance.

Petitioner further represents and alleges that the said alleged committee has no jurisdiction over the subject matter therein recited.

Second. The said alleged committee has no jurisdiction or authority of law to issue a writ of attachment, or to require perforce of law, or otherwise, the attendance of this petitioner before said alleged committee at Charleston, West Virginia.

Third. That to arrest your petitioner by the sheriff of Wood
3 county, West Virginia, under said alleged writ of attachment is depriving your petitioner of his constitutional rights and liberty.

Fourth. That the alleged house of delegates, which adjourned *sine die*, as shown by the records of said house of delegates, on the 24th day of February, 1905, has no power constitutionally or otherwise to appoint a committee with the powers and for the purposes named in the alleged resolution, after the said legislature had adjourned *sine die*.

Fifth. The officer whose official record was in question at the time of the adoption of said resolution is no longer an officer, but his term of office has expired, and he is now a private citizen.

Sixth. The alleged committee has no legal jurisdiction, authority or power, either by its own appointed agent, or the sheriff or other officer of the State, to issue or have executed the writ complained of against your petitioner.

For the foregoing and other reasons, appearing upon the face of the attachment and proceedings, and the laws of the State of West Virginia and the Constitution of the United States, to deprive your petitioner of his liberty as a citizen of the State, it is apparent your petitioner is unlawfully attached and arrested, and is unlawfully restrained of his liberty; and is now unlawfully held in the custody of the sheriff of Wood county, by the said sheriff, under the alleged authority aforesaid.

Therefore, your petitioner humbly prays that your honor's said court, now in session, will issue your most gracious writ of *habeas corpus*, commanding the sheriff of Wood county to produce the body of your petitioner before your honorable court, with the day and cause of his detention.

CHAS. T. CALDWELL.

STATE OF WEST VIRGINIA, Wood County, } *To wit:*

Charles T. Caldwell, the petitioner named in the foregoing bill,
4 being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information, he believes them to be true.

CHAS. T. CALDWELL.

Taken, sworn to and subscribed before me this 3rd day of April, 1905.

W. S. ALLEN,
Notary Public for Wood Co., W. Va.

EXHIBIT "A" WITH PETITION.

(Filed April 5, 1905.)

5 State of West Virginia to the sheriff of Wood county, Greeting:

Whereas, the house of delegates, at the regular session thereof, did on the 24th day of February, 1905, adopt a preamble and resolution in words and figures following, to-wit:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable, and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White, had or has any agreement, understanding, or contract with any one whereby the fees and emoluments of the office of secretary of state were to be shared with him, in any way, manner or form, either directly to himself or indirectly, through any other person, form or corporation; and whether Governor Albert B. White, did ever in fact, in any way, manner or form, receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of "non-resident" domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses, and to send for persons and papers, to appoint a sergeant-

at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct such investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature. Such
6 compensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates, on the certificate of the chairman of the committee, and

Whereas, the Honorable Fred Paul Grosscup, speaker of the said house of delegates, by authority and in pursuance of said resolutions, did on the said 24th day of February, 1905, appoint as such committee John A. Preston, Haymond Maxwell and James A. Seaman, members of said house of delegates, to ascertain and report on the matters in the said resolution specified; and whereas, the said John A. Preston, Haymond Maxwell and James A. Seaman as such committee, by authority of such resolution and appointment, did on the 2nd day of March, 1905, meet at the State capitol building, in the city of Charleston, and did then and there organize said committee by electing James A. Seaman, a member of said committee, as chairman thereof, and

Whereas, at a subsequent meeting of said committee, to-wit, on the 28th day of March, 1905, it was then and there ordered that C. T. Caldwell and Reese Blizzard, gentlemen, be summoned to appear and be before said committee at the State capitol in the city of Charleston, West Virginia, on the 31st day of March, 1905, to give evidence before said committee touching the matters and things in the said resolution set forth, and thereupon the said James A. Seaman, chairman of said committee, in pursuance of said order, did on the said 28th day of March, 1905, issue such summons, directed to the sheriff of Wood county, commanding him to summon the said C. T. Caldwell and Reese Blizzard to appear and be before the said committee at the time and place last aforesaid, to testify and the truth to speak of and concerning the matters and things in said resolution to be inquired of; and it appearing that said summons was duly served upon the said C. T. Caldwell and Reese Blizzard, and each of them, on the 28th day of March, 1905, in the county of Wood and State aforesaid, as is shown by the return of said sheriff, endorsed thereon, in the words and figures following, to-wit:

7 "Executed March 28th, 1905, by delivering a copy of the within writ in person to C. T. Caldwell and Reese Blizzard, in Wood county, West Virginia.

W. H. CARFER, S. W. C."

And the said C. T. Caldwell and Reese Blizzard, and each of them, having failed and refused to attend and be before the said committee at the time and place aforesaid, in obedience to said summons,

These are therefore to command you, the said sheriff of Wood county, in the name of the State of West Virginia, to forthwith attach and take into your custody the bodies of said C. T. Caldwell

and Reese Blizzard, and each of them, and have them before the said committee at the State capitol, in the city of Charleston, in the State of West Virginia, to answer said committee of a contempt in failing to attend and testify before said committee as aforesaid, and to be further dealt with according to law, and have then and there this writ.

Given under my hand as chairman of said committee, at the city of Charleston, in the State of West Virginia, this the 31st day of March, 1905, and of the State the 42nd year.

____ ____,
Chairman of said Committee.

Order Continuing Hearing.

And at another day, to-wit: at a circuit court of the United States for the northern district of West Virginia, continued and held at Parkersburg, in said district, on the 20th day of April, 1905, the following order was made and entered of record, to-wit:

In re CHARLES T. CALDWELL. *Habeas Corpus.*

By agreement of counsel for all the parties hereto, including W. H. Carfer, sheriff, and the committee whose chairman issued the process in question, it is ordered that this proceeding be continued for the period of two weeks, or to such time as nearly thereto as possible as may suit the convenience of the parties and the court, and at such place as the court may designate. And during the
8 period of such continuance the terms and provisions of the former order entered herein shall remain in full effect.

Order Filing Answer of Sheriff, etc.

And at another day, to wit: on the 24th day of May, 1905, the following order was made and entered of record, to-wit:

The following two orders having been heretofore directed to be entered on the 19th day of May, 1905, and having been inadvertently omitted from the record, are now ordered to be entered *nunc pro tunc.*

Ex Parte C. T. CALDWELL. Upon a Proceeding in *Habeas Corpus.*

This day W. H. Carfer, sheriff of Wood county, the said C. T. Caldwell being here present in court, tendered his return to the writ of *habeas corpus* heretofore issued in the above matter; which return is ordered to be filed, together with the four several exhibits returned therewith.

And the said C. T. Caldwell, having heretofore been discharged from custody pending this proceeding, it is ordered that he be discharged until the further order of this court, to be made herein.

Return of W. H. Carfer, Sheriff.

(Filed May 19, 1905.)

In the Circuit Court of the United States for the Northern District of West Virginia.

In re C. T. CALDWELL.

To the honorable judges of said court:

W. H. Carfer, to whom the within and annexed writ is directed, has now here before the said court the body of C. T. Caldwell, therein named, as thereby commanded.

And the said W. H. Carfer does hereby certify that the cause of the detention of the said C. T. Caldwell, is a certain order or
9 warrant, directed to the undersigned as the sheriff of Wood county, State of West Virginia, signed by James A. Seaman, chairman of an investigating committee, appointed by the speaker of the house of delegates, under, in accordance with, in pursuance of, and as authorized and directed by, a resolution passed and adopted by the house of delegates of the State of West Virginia on the 24th day of February, 1905; a copy of which said resolution, duly certified by the clerk of the said house of delegates and the keeper of the rolls of the State of West Virginia, is hereto attached, marked Exhibit No. 1, with this return, and is hereby made a part of this return.

I do hereby further certify, that the legislature of West Virginia, and the house of delegates of the State of West Virginia, met and assembled in regular, biennial session, at the capitol of West Virginia, in the city of Charleston, on the 11th day of January, 1905. And said session of the legislature of West Virginia, and of said house of delegates thereof, were in regular session, as aforesaid, on the 24th day of February 1905, and at the time the said resolution, set forth in said Exhibit No. 1, was adopted and passed.

And I do further certify, that at the time the said resolution was passed, Albert B. White, sometimes written, A. B. White, and who is referred to in the said resolution, was the governor of the State of West Virginia, and continued to be the governor of the said State of West Virginia, up to the 4th day of March, 1905; and that on the 4th day of March, 1905, William M. O. Dawson, was inaugurated governor of the State of West Virginia, and on that day became governor of the said State, and has been governor thereof ever since; but that during nearly all of the term of the said Albert B. White, to-wit: from the 4th day of March, 1901, up to the 3rd day of March, 1905, the said William M. O. Dawson, was the secretary of state of the State of West Virginia.

And I do further certify that immediately after the said resolutions were passed and adopted, to-wit: on the 24th day of
10 February, 1905, the speaker of the said house of delegates appointed the said James A. Seaman, John A. Preston, and

Haymond Maxwell, all of whom were then and still are, members of the said house of delegates of the said State of West Virginia, as the committee to be appointed and as authorized by said resolution; and that said committee, so appointed, as aforesaid, met before the 31st day of March, 1905, to-wit: on the 2nd day of March, 1905, and organized and elected the said James A. Seaman, as chairman of said committee; and the said committee proceeded to perform the duties required of it under and by virtue of said resolution.

I do further certify, that on the 28th day of March, 1905, the said committee decided and determined, that in the investigation of the matters referred to in said resolutions, and in performing its duties under said resolutions, it needed the evidence of said C. T. Caldwell, and for the purpose of taking the evidence of the said C. T. Caldwell, the said committee, did, on the 28th day of March, 1905, cause a subpœna to be issued, requiring the said C. T. Caldwell to appear before the said committee to testify on the 31st day of March, 1905, at a session of said committee then to be held in the city of Charleston, in the county of Kanawha; that said summons requiring the attendance of the said C. T. Caldwell, was placed in the hands of the sheriff of Wood county, in which county the said C. T. Caldwell then resided, and said summons was duly served upon the said C. T. Caldwell, by the sheriff of said Wood county, on the 28th day of March, 1905, a true copy of which said summons or subpœna, and the return of the said sheriff of said Wood county thereon, showing the service thereof, is hereto attached marked Exhibit No. 2, as a part of this return.

I do further certify, that when the said committee met in the said city of Charleston, on the said 31st day of March, 1905, the day on which the attendance of the said C. T. Caldwell was required by the said summons or subpœna, so served upon him as aforesaid, the said committee called for the said C. T. Caldwell, but the said
11 C. T. Caldwell failed to attend the said meeting of said committee, and failed to appear before the said committee, and failed even to go to the city or place where the meeting of the said committee was then and there being held.

And thereupon, the said committee, by virtue of the powers vested in it by the said resolutions contained in said Exhibit No. 1, and under the provisions of section 7 of chapter 12 of the Code of West Virginia of 1899, and the laws of the State of West Virginia, passed and entered an order for the purpose of enforcing obedience to the said summons which had been disobeyed by the said C. T. Caldwell, and then and there for the purpose of enforcing obedience to said summons, which had been disobeyed, ordered and directed that an attachment should issue, directed to the sheriff of Wood county, in which county of Wood, the said C. T. Caldwell then and there resided and has ever since resided; all of which will appear from the proceedings of the said committee, ordering said summons to be issued, and said attachment to be issued, a copy of which proceed-

ings, duly signed by the chairman of said committee, is herewith filed marked Exhibit No. 4 as a part of this return.

And thereupon, the said order and attachment was issued, a copy of which attachment is herewith filed marked Exhibit No. 3; and the same was placed in the hands of the sheriff of Wood county, for service upon the said C. T. Caldwell. And acting under said attachment, and by virtue of the authority contained in said resolutions, set forth in Exhibit No. 1, and the laws of the State of West Virginia, and in obedience to the said order of attachment, the undersigned, who was then and there during all the time of the happening of the events hereinbefore alleged, sheriff of the said county of Wood, proceeded to attach and arrest the said C. T. Caldwell, and I did arrest the said C. T. Caldwell, under and according to the terms of the said order and attachment, and the said proceedings hereinbefore referred to, and the events hereinbefore alleged,
12 and the action of the said committee hereinbefore alleged and said attachment, I do hereby certify as the cause of the detention of the said C. T. Caldwell.

I do further certify, that the said C. T. Caldwell, James Seaman, Haymond Maxwell and the undersigned, were, during all the times aforesaid, and still are, citizens, residents and inhabitants of the northern district of West Virginia; and that the said John A. Preston was, during all the time aforesaid, and still is, a citizen, resident and inhabitant of the southern district of West Virginia.

This 18 day of May, 1905.

W. H. CARFER,
Sheriff of Wood County, West Va.

EXHIBIT No. 1, WITH ANSWER.

"Mr. Seaman submitted the following:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore,

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White had or has any agreement, understanding or contract with any one, whereby the fees and emoluments of the office of secretary of state were to be divided or shared with him in any way, manner or form, either directly to himself or indirectly through any other person, firm or corporation; and whether Governor Albert B. White did ever in fact in any way,

manner or form receive any of the fees or emoluments of the office of secretary of state.

13 Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of "non-resident" domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct said investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature. Such compensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates on the certificate of the chairman of the committee.

On motion of Mr. Seaman, reference of the resolution to a committee was dispensed with, and it was taken up for immediate consideration, and adopted.

Thereupon, the speaker appointed as the committee provided for in the resolution, Mr. Seaman, Mr. Maxwell (of Harrison), and Mr. Preston."

STATE OF WEST VIRGINIA,
Office of Clerk of House of Delegates.

I, Harry Shaw, clerk of the house of delegates of the legislature of this State and, as such clerk, keeper of the rolls, having carefully examined the foregoing preambles and resolution with the recorded and approved proceedings of the house of delegates of February the 24th, 1905 do hereby certify the same to be a true and correct transcript therefrom. I further certify that the said preambles and resolution were adopted by the house of delegates on February 24th, 1905; that Mr. Seaman who submitted the said preambles and resolution for consideration and conducted the proceedings thereon was a regularly elected and qualified member of that body; that the speaker of the house of delegates appointed as the committee provided for in said resolution, Mr. James A. Sea-

14 man, of the county of Jackson; Mr. Haymond Maxwell, of the county of Harrison; and Mr. John A. Preston, of the county of Greenbrier; all three of whom were then and are now members of the house of delegates—one of the two branches composing the legislative department of the State government. And I further certify that on the date of the adoption of said preambles and resolution the legislature of this State was in regular biennial session in the city of Charleston, having begun said session (of forty-five days) on the 11th day of January, 1905—being the second Wednesday in said month.

All of which appear from the records on file in my office, and of which records I am the keeper.

Witness my hand, at the city of Charleston the seal of government, this the 17th day of April, A. D. 1905.

HARRY SHAW,
Clerk of House of Delegates and Keeper of the Rolls,
By J. B. PEYTON,
Ass't Clerk.

STATE OF WEST VIRGINIA, *ss:*

I, C. W. Swisher, secretary of state of said State, hereby certify that Harry Shaw, whose name is signed to the above certified copy of a part of the proceedings of the house of delegates of February 24, 1905, was on that date and is now the clerk of the house of delegates duly elected and qualified as such and authorized under the laws of the State to make certified transcripts from said proceedings.

Given under my hand and the less seal of said State, at the city of Charleston, this 18th day of April, 1905.

[SEAL.] C. W. SWISHER,
Secretary of State.

EXHIBIT NO. 2 WITH ANSWER.

State of West Virginia to the sheriff of Wood county, Greeting:

15 Whereas, the house of delegates of the State of West Virginia, at the regular session of the legislature, did on the 24th day of February, 1905, adopt the following preamble and resolution, to-wit:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore,

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable, and select one of its members chairman, and has leave to sit after adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White had or has any agreement, understanding or contract with any one, whereby the fees and emoluments of the office of secretary of state, were to be divided or shared with him in any way, manner or form, either directly to himself, or indirectly through any other person, firm or corporation; and whether Governor Albert B. White did ever in fact in any way, manner or form, receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax, on the charters of "non-resident" domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses, and to send for persons and papers to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary, to conduct such investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature.

Such compensation and mileage and other expenses of the
16 committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates, on the certificate of the chairman of the committee.

And, whereas, the Honorable Fred Paul Grosscup, speaker of said house of delegates, by authority and in pursuance of said resolution, did on the said 24th day of February, 1905, appoint as such committee, John A. Preston, Haymond Maxwell and James A. Seaman, members of the house of delegates, to ascertain and report the matters in said resolution specified, and

Whereas, the said John A. Preston, Haymond Maxwell and James A. Seaman, as such committee, under and by virtue of such resolution and appointment, did on the 2nd day of March, 1905, meet at the capitol, at the city of Charleston, and did then and there organize by electing James A. Seaman chairman of such committee, and did then and there appoint F. A. McGrew sergeant-at-arms of such committee. And at a subsequent meeting of such committee on the 28th day of March, 1905, at the said capitol, in the city of Charleston, it was ordered that C. T. Caldwell and Reese Blizzard be summoned to appear before the said committee at the State capitol, in the city of Charleston, West Virginia, on Friday, the 31st day of March, 1905, at ten o'clock a. m., to testify and the truth to speak of and concerning the matters and things in said resolution to be inquired of.

You, the said sheriff of Wood county, are hereby commanded in the name of the State of West Virginia, to summon the aforesaid C. T. Caldwell and Reese Blizzard to appear and be before said committee at the State capitol in the said city of Charleston, on the 31st day of March, 1905, at ten o'clock a. m., to give evidence before said committee on the matters aforesaid, and have then and there this writ.

Given under my hand as chairman of said committee, at the said city of Charleston, this 28th day of March, 1905, and of the State the 42d year.

JAMES A. SEAMAN,
Chairman of said Committee.

17 (Return endorsed :)

Executed M'ch 28th, 1905, by delivering a copy of the within writ in person to C. T. Caldwell and Reese Blizzard, in Wood Co., W. Va.

W. H. CARFER, S. W. C.

EXHIBIT NO. 3 WITH ANSWER.

18 State of West Virginia to the sheriff of Wood county, Greeting:

Whereas, the house of delegates, at the regular session thereof, did on the 24th day of February, 1905, adopt a preamble and resolution in words and figures following, to-wit:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable, and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White, had or has any agreement, understanding, or contract with any one whereby the fees and emoluments of the office of secretary of state were to be shared with him, in any way, manner or form, either directly to himself or indirectly, through any other person, form or corporation; and whether Governor Albert B. White, did ever in fact, in any way, manner or form, receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of "non-resident" domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses, and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct such investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature. Such com-

19 pensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates, on the certificate of the chairman of the committee, and

Whereas, the Honorable Fred Paul Grosscup, speaker of the said house of delegates, by authority and in pursuance of said resolutions, did on the said 24th day of February, 1905, appoint as such committee John A. Preston, Haymond Maxwell and James A. Seaman, members of said house of delegates, to ascertain and report on the matters in the said resolution specified; and whereas, the said John A. Preston, Haymond Maxwell and James A. Seaman as such committee, by authority of such resolution and appointment, did on the 2nd day of March, 1905, meet at the State capitol building, in the

city of Charleston, and did then and there organize said committee by electing James A. Seaman, a member of said committee, as chairman thereof, and

Whereas, at a subsequent meeting of said committee, to-wit, on the 28th day of March, 1905, it was then and there ordered that C. T. Caldwell and Reese Blizzard, gentlemen, be summoned to appear and be before said committee at the State capitol in the city of Charleston, West Virginia, on the 31st day of March, 1905, to give evidence before said committee touching the matters and things in the said resolution set forth, and thereupon the said James A. Seaman, chairman of said committee, in pursuance of said order, did on the said 28th day of March, 1905, issue such summons, directed to the sheriff of Wood county, commanding him to summon the said C. T. Caldwell and Reese Blizzard to appear and be before the said committee at the time and place last aforesaid, to testify and the truth to speak of and concerning the matters and things in said resolution to be inquired of; and it appearing that said summons was duly served upon the said C. T. Caldwell and Reese Blizzard, and each of them, on the 28th day of March, 1905, in the county of Wood and State aforesaid, as is shown by the return of said sheriff, endorsed thereon, in the words and figures following, to-wit:

"Executed March 28th, 1905, by delivering a copy of the within writ in person to C. T. Caldwell and Reese Blizzard, in Wood county, West Virginia.

W. H. CARFER, S. W. C."

And the said C. T. Caldwell and Reese Blizzard, and each of them, having failed and refused to attend and be before the said committee at the time and place aforesaid, in obedience to said summons,

These are therefore to command you, the said sheriff of Wood county, in the name of the State of West Virginia, to forthwith attach and take into your custody the bodies of said C. T. Caldwell and Reese Blizzard, and each of them, and have them before the said committee at the State capitol, in the city of Charleston, in the State of West Virginia, to answer said committee of a contempt in failing to attend and testify before said committee as aforesaid, and to be further dealt with according to law, and have then and there this writ.

Given under my hand as chairman of said committee, at the city of Charleston, in the State of West Virginia, this the 31st day of March, 1905, and of the State the 42nd year.

JAMES A. SEAMAN,
Chairman of said Committee.

EXHIBIT NO. 4 WITH ANSWER.

CHARLESTON, WEST VIRGINIA, March 2, 1905.

The committee of investigation appointed by the speaker of the house of delegates on Friday, February 24th, 1905, pursuant to a resolution adopted by said body on said date, met in the capitol building in the private room of the speaker of the house, on Thursday, March 2nd, 1905.

Present: Messrs. Seaman, Preston and Maxwell.

The committee organized by selecting Mr. Preston temporary chairman.

The resolution in pursuance of which the committee was
21 appointed was read by Mr. Maxwell.

The resolution is as follows:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore,

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable, and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White had or has any agreement, understanding or contract with any one whereby the fees and emoluments of the office of secretary of state were to be divided or shared with him in any way, manner or form, either directly to himself, or indirectly through any other person, firm or corporation; and whether Governor Albert B. White did ever in fact in any way, manner or form receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of "non-resident" corporations.

Said committee is hereby empowered to compel the attendance of witnesses, and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct such investigation. Members of the committee shall receive the same compensation and mileage as are paid to the members of the legislature. Such compensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates, on the certificate of the chairman of
22 the committee.

On motion of Mr. Maxwell, Mr. Seaman was elected permanent chairman.

By unanimous vote of the committee it was ordered that effort be made to secure the services of the following named persons in the capacities as follows:

Attorney to assist in conducting the investigation, Hon. W. A. McCorkle.

Sergeant-at-arms, for the committee, F. A. McGrew.

Stenographer for the committee, W. B. Parkhurst.

The committee then adjourned to meet at the same place on Tuesday, March 14, 1905.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 14, 1905.

The committee met pursuant to adjournment of March 14, 1904.

Present: Messrs. Seaman, Preston and Maxwell.

The chairman of the committee announced that the services of the persons named in the first day's proceedings of the committee had been secured.

Information was received from Hon. W. A. McCorkle who had been selected as counsel for the committee that it was impossible for him to be present on this day, and the committee, on motion, adjourned until ten o'clock to-morrow morning.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 15, 1905.

The committee met at ten o'clock a. m., pursuant to adjournment of yesterday.

Present: Messrs. Seaman, Preston and Maxwell, members of the committee, and George W. McClintic, Esq., counsel for Governor A. B. White.

In the absence of Hon. W. A. McCorkle, counsel, the committee took a recess until this afternoon at three o'clock.

3:00 O'CLOCK P. M.

23 The committee met at the expiration of the recess.

Present: All the members of the committee, Hon. W. A. McCorkle and George W. McClintic, Esq.

Summons were issued, directing the sergeant-at-arms to summon Reese Blizzard, C. T. Caldwell and C. D. Elliott to appear before the committee on Saturday, March 18, 1905, at ten o'clock a. m.

On motion the committee adjourned until tomorrow morning at ten o'clock.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 16, 1905.

The committee met pursuant to adjournment of yesterday.

Present: Messrs. Seaman, Preston and Maxwell.

There being no witnesses present, the committee, on motion adjourned until tomorrow morning at ten o'clock.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 17, 1905.

The committee met pursuant to adjournment of yesterday.

Present: Messrs. Seaman, Preston and Maxwell.

There being no witnesses present, the committee, on motion, adjourned until tomorrow morning at ten o'clock.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 18, 1905.

The committee met pursuant to adjournment of yesterday.

Present: Messrs. Seaman, Preston and Maxwell, and counsel.

There being no witnesses present, the committee, on motion, adjourned until Monday, March 20, 1905, at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 20, 1905.

The committee met pursuant to adjournment of Saturday.

Present: Messrs. Seaman, Preston and Maxwell and counsel.

C. D. Elliott appearing, pursuant to summons, his evidence was taken and reduced to writing. (See appendix.)

24 Ordered that summons be issued for W. E. R. Byrne, W. M. O. Dawson, E. K. Reedy, J. M. Mathews, John Baker White and E. L. Boggs, returnable March 28, 1905, at ten o'clock a. m.

There being no other witnesses present, on motion the committee adjourned until March 28, 1905, at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 28, 1905.

The committee met pursuant to adjournment of March 20, 1905.

Present: Messrs. Seaman, Maxwell and Preston and counsel.

The following persons being present were examined by the committee and counsel and their testimony reduced to writing: E. L. Boggs, John Baker White and J. M. Mathews. (See appendix.)

Reese Blizzard and C. T. Caldwell having failed to appear in obedience to a former summons, it was ordered that they again be summoned to appear before the committee on the 31st day of March, 1905, and that the summons be directed to the sheriff of Wood county, West Virginia.

There being no further business before the committee, it adjourned until tomorrow morning at ten o'clock.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 29, 1905.

The committee met pursuant to adjournment of yesterday.

Present: Messrs. Seaman, Preston and Maxwell.

There being no witnesses present, the committee, on motion, adjourned until tomorrow morning at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 30, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
There being no witnesses present, the committee, on motion, adjourned until tomorrow morning at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

25 CHARLESTON, W. VA., March 31, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
The summons issued by the committee on March 28, 1905, directed to the sheriff of Wood county, West Virginia, for Reese Blizzard and C. T. Caldwell was this day returned with the following endorsement thereon, towit:

"Executed March 28th, 1905, by delivering a copy of the within writ in person to C. T. Caldwell and Reese Blizzard, in Wood Co. W. Va.

W. H. CARFER, S. W. C."

Reese Blizzard and C. T. Caldwell having failed to appear before the committee in obedience to said summons it is ordered that an attachment do issue against said Blizzard and Caldwell and each of them, for their contempt in failing to appear before said committee, in obedience to said summons of March 28th, directed to the sheriff of Wood county, West Virginia, and returnable forthwith.
It was also ordered that summons be issued for H. C. Woodyard, directed to the sheriff of Roane county, West Virginia, returnable April 4th, 1905.
The committee adjourned until tomorrow morning at ten o'clock.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., April 1, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
There being no witnesses present, the committee, on motion, adjourned until Monday, April 3, 1905, at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., April 3, 1905.

The committee met pursuant to adjournment of Saturday, April 1, 1905.
Present: Messrs. Seaman, Preston and Maxwell.
There being no witnesses present, the committee, on motion,
26 adjourned until tomorrow morning at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., April 4, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
The summons issued March 31, 1905, for H. C. Woodyard was *this day returned with the following endorsement thereon, to-wit:*

"Served the within writ on the within named H. C. Woodyard on the 3d day of April, 1905, by delivering to his wife Emma Woodyard a copy thereof at his usual place of abode in said county and explained to her the purport thereof, the said H. C. Woodyard not found.

H. F. GOFF,
Sheriff Roane Co."

The committee then on motion adjourned until tomorrow at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., April 5, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
There being no witnesses present, on motion the committee adjourned until tomorrow at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., April 6, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
It is ordered that the chairman certify to the auditor, to be paid out of the contingent fund of the house of delegates, the following sums to the following persons:

To James A. Seaman $72.00 per diem and $21.20 mileage.
To John A. Preston $72.00 per diem and $27.00 mileage.
To Haymond Maxwell $72.00 per diem and $43.40 mileage.
To F. A. McGrew $—— per diem and $—— for —— miles, mileage, and $5.50 for serving 11 processes.
27 To W. B. Parkhurst —— days per diem, $——.
To Southern Bell Telephone Co., $3.25.
To H. F. Goff, sheriff of Roane county for serving process $0.75.

The attachment for Reese Blizzard and C. T. Caldwell dated March 31, 1905, and directed to the sheriff of Wood county to be executed according to the command thereof and the said sheriff having informed the committee that the said Blizzard and Caldwell had sued out and obtained a writ of *habeas corpus* from the judge of the circuit court of the United States for the northern district of West Virginia, which said writ was and is made returnable before the United States courtat Clarksburg, West Virginia, on the 20th day of April, 1905; pending a decision of the matters arising on

said petition and writ of *habeas corpus*, on motion the committee adjourned to meet at the same place subject to the call of the chairman.

JAMES A. SEAMAN, Chairman.

Order Submitting Case.

And at the same day, to-wit: on the 24th day of May, 1905, the following order was made and entered of record, to-wit:

In re C. T. CALDWELL. Upon a Writ of *Habeas Corpus*.

This day came the defendant, C. T. Caldwell, and the matters of law arising upon the writ of *habeas corpus* heretofore issued in this cause, and the return of the sheriff of Wood county thereon, were argued by counsel, and leave given to either party to file briefs in the case, and the court takes time to consider thereof.

Order Discharging Prisoner.

In re C. T. CALDWELL. Upon *Habeas Corpus*.

This cause came on this day to be again heard upon the petition of C. T. Caldwell, the return of W. H. Carfer, sheriff of Wood
28 county, exhibits filed with said petition and with said return, former orders entered in this cause, and was argued by counsel.

On consideration of all which the court is of opinion and doth adjudge, for reasons set forth in a written opinion now here filed, that the said C. T. Caldwell is held in custody by the said W. H. Carfer without due and lawful authority.

It is therefore ordered that said C. T. Caldwell be, and is hereby, discharged from the custody of the said W. H. Carfer, sheriff as aforesaid.

Opinion.

29 Article 1, sec. 9 of the Constitution of the United States provides that "the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." This provision is not a grant of power to the Federal courts but a prohibition against its suspension by Congress or the Executive. The right existing in Federal courts to issue the writ is purely a statutory one conferred by sections 716, 751, 758 and 753 of the Revised Statutes.

The supreme court and the circuit and district courts shall have power to issue writs of *habeas corpus*.

SECTION 752. The several justices and judges of the said courts within their respective jurisdictions, shall have power to grant writs

of *habeas corpus* for the purpose of an inquiry into the cause of re straint of liberty.

SECTION 753. The writ of *habeas corpus* shall in no case extend to a prisoner in jail, unless he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof, or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof, *or is in custody in violation of the Constitution or of a law or treaty of the United States*, &c.

It will thus be seen that the *power* of Federal courts to issue this writ is co-extensive with the common law power provided only that it be not used for deliverance of a prisoner in jail, except in the cases specified. This Federal jurisdiction, when assumed, is paramount. These sections of the Revised Statutes authorizing the issuance of the writ, are the supreme law of the land and a judgment of acquittal thereunder by the Federal courts will protect the relator from molestation or prosecution elsewhere.

Kelley *v.* State, 68 Fed., 652.

The writ may issue to inquire into the cause of commitment under a civil process as well as a criminal one.

30 *Ex-parte* Randolph Fed. case No. 11,558.

Chief Justice Waite, in *Ex-parte* Tom Tong, 108 U. S. 556, says: "The writ of *habeas corpus* is the remedy which the law gives for the enforcement of the civil right of personal liberty. Resort to it sometimes becomes necessary because of what is done to enforce laws for punishment of crime; but the judicial proceeding under it is not to inquire into the criminal act which is complained of, but into the right of liberty notwithstanding the act. Proceedings to enforce civil right are civil proceedings, and proceedings for the punishment of crime are criminal proceedings." The exercise of this power by Federal courts to release citizens from unlawful restraint imposed by inferior Federal tribunals or authority is accompanied with no embarrassment or difficulty. It seems to us such exercise is not only a right but a duty, always bearing in mind that the writ shall in no case be allowed to become a substitute for a writ of error or appeal. Its plain and simple scope in such cases is to restore to his liberty a person held under void authority. Mr. Black in his exhaustive note to *In re* Huse, 25 C. C. A. 1, has well said: "A writ of *habeas corpus* cannot be used as a substitute for an appeal or a writ of error. It cannot be made the means of procuring in a higher court, a review of the judgment of a lower court in respect to alleged errors, either of law or fact, or mere irregularities, occurring in the course of a criminal trial. Since it is in the nature of a collateral attack upon the judgment, the inquiry is limited to the question whether the trial court has acted without jurisdiction, or has exceeded its jurisdiction, so as to render the sentence void." Citing numerous authorities.

The exercise of this power in behalf of Federal officers prosecuted illegally by State courts has also become a well determined one, having been exercised to the fullest limit in the famous case of *In re* Neagle, 39 Fed. 833, 135 U. S. 1, where a U. S. marshal being
31 tried by a State court for homicide committed in defense of the life and person of a justice of the Supreme Court was released.

The power of Federal courts to release by *habeas corpus* a person held in State custody contrary to Federal Constitution or laws is unquestioned, but the exercise of this power is accompanied with very great embarrassment and should be so exercised with sound discretion and great caution. *In re* Huse, 79 Fed. 305, S. C., 25 C. C. A., 1, *In re* Jordan, 40 Fed. 238. *Ex-parte* Royall, 117 U. S. 241. *Ex-parte* Fonda, 117 U. S. 516. Cook *v.* Hart, 146 U. S. 183. In this latter case Mr. *Justice Brown says:* "Where a person is in custody under process from a State court of original jurisdiction for an alleged offense against the laws of that State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the circuit court of the United States has a discretion whether it will discharge him in advance of his trial in the court in which he is indicted, although this discretion will be subordinated to any special circumstances requiring immediate action. While the Federal courts have the power and may discharge the accused in advance of his trial if he is restrained of his liberty in violation of the Federal Constitution or laws, they are not bound to exercise such power even after a State court has finally acted upon the case, but may, in their discretion require the accused to sue out his writ of error from the highest court of the State, or even from the Supreme Court of the United States." See also New York *v.* Eno, 155 U. S., 89; *In re* Chapman, 156 U. S., 211; Whitten *v.* Tomilson, 160 U. S. 231.

The reasons why Federal courts should exercise this power with caution and only in extraordinary cases, where it effects the control of the State courts, are clear and cogent. They spring from the peculiar relations existing between the two authorities, from the mutual comity and forbearance which ought to exist between them
32 and to avoid all strife and conflict that may arise on account of their concurrent jurisdiction, having the same purpose and duty to perform, that to administer justice "agreeable to the usage and principles of law."

Under these principles and limitations we come, therefore, at once in this case to the first important question, whether the facts are of such character as to warrant, in its sound discretion, the intervention of this court. Briefly states, here is a citizen of the United States, resident within the jurisdiction of this court, who says that he is deprived of his liberty, not by "due process of law," not by any court of competent jurisdiction, State or Federal, but by a pretended writ of attachment and arrest issued by another citizen claiming to be chairman of a committee, constituted by a single house of the legis-

lative branch of the State, sitting without power or authority, after the power of such house itself by reason of its adjournment, under the constitution of the State, had ceased or was in abeyance, seeking to investigate, and to require him to testify touching matters that the legislature could not itself or through any committee constituted by it inquire into, but which matters were peculiarly within the province of the judicial power of the State under its well ordered criminal laws to examine and decide upon.

If these things be true, is it not such an extraordinary condition of affairs, as would warrant the intervention of the first court, State or Federal, applied to? Need there be any hesitation about acting because of forbearance due the State courts when their action is not only not involved, but their authority is actually usurped by another and distinct department of government contrary to the express inhibition of the State constitution under which both of them must act?

33 Is not the "free doom" of every citizen under the law as dear and as precious to the American today as it was to the Saxon of old? Is his enjoyment of it to be jeopardized for a day by the unwarranted and vexatious action of private citizens acting under a wholly unwarranted and usurped power, not of a judicial but of a legislative body?

We think there can be but one answer. If these allegations be true it is not only the exercise of a sound discretion but an imperative duty for this court thus appealed to, to intervene for both the protection of the citizens' right, and the maintenance of the power and jurisdiction of the judiciary, Federal and State, to enforce, as constitutionally required of it, without interruption, the laws which it is the sole power of the legislative branch of government to enact.

Therefore, the matter resolves itself finally into an examination of whether these allegations are true or not. *In re* Jordon, 49 Fed. 238, speaking of the duty of Federal courts touching their exercise of the power to issue these writs in behalf of persons under State authority, an investigation of the questions raised, where practicable, is not only authorized but urged, before issuing the writ. We have before us the petition and the return of the arresting officer. Besides these this court, like any other court within the jurisdiction of this State, has right to take judicial notice of the journal of the house of delegates of the State, so far as pertinent, From these it appears clearly: On February 24th, 1905, within three hours of midnight when the regular session of the legislature, by constitutional limitations was to expire, Albert B. White, then governor of the State, but whose term of office by like constitutional limitation was to expire nine days thereafter, sent to the house of delegates this message:

To the honorable the speaker and members of the house of delegates:

34 A few days ago certain charges were made against me by a member of the State senate, and printed broadcast in the news-

papers. These charges were that (1) I had an agreement, understanding or contract whereby the fees or emoluments or both, received by the secretary of state, whom I appointed, were divided with me, or applied, appropriated or paid in some manner to my use and benefit, directly or indirectly, and (2) that I was concerned in an improper manner in the proposed reduction of the license tax on charters of "non-resident" domestic corporations. In the State senate a committee was raised to investigate these charges. I and others appeared before the committee and made statements. It is understood that the committee will take no further testimony. I feel that the grave charges made against me have not been duly investigated, especially as there are rumors in circulation that there is evidence of the truthfulness of these charges, or one of them, which evidence was not presented but withheld under some sort of alleged agreement or understanding; and this has been stated in some newspapers. The house of delegates has the sole power of impeachment under our constitution. If I am guilty of these charges, or either of them, I ought to be found guilty and punished, either by impeachment, or on indictment and trial in court. If I am innocent, as I declare I am, I have the right to have that fact declared after a full, free and thorough investigation, and my good name and that of my family vindicated. Besides, I submit that the honor of the State, whose chief officer I am, demands that these charges be promptly and thoroughly inquired into, and their truthfulness established.

I therefore earnestly request that your honorable body will raise a committee to investigate these charges, and also whether I have been or am to be, in any way whatsoever, the receipient, directly or indirectly, of any of the fees or emoluments of the secretary of state or of any other officer or person appointed by me; and that such committee be empowered to sit after the adjournment of the legislature be given full power to compel the attendance of witnesses, and to send for persons and papers and be instructed to make full and thorough investigation, and when it has completed the same and made its report to file a transcript of the evidence taken before it and its report with the governor, to be by him laid before the next session of the legislature, special or regular; and that in the meantime their findings be made public.

Respectfully, ALBERT B. WHITE.

Executive chamber, Charleston, W. Va., February 24th, 1905.

One hour later Mr. Seaman, a member, submitted to the house the following:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore,

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as

such committee of investigation. Such committee will meet as soon as practicable and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White had or has any agreement, understanding or contract with any one whereby the fees and emoluments of the office of secretary of state were to be divided or shared with him in any way, manner or form, directly or indirectly, either directly to himself, or indirectly through any other person, firm or corporation; and whether Governor Albert
36 B. White did ever in fact in any way, manner or form, receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of "non-resident" domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct said investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature. Such compensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates on the certificate of the chairman of the committee.

Which was immediately adopted and the speaker appointed Mr. Seaman, Mr. Maxwell (of Harrison) and Mr. Preston such committee. This committee it seems organized, electing Mr. Seaman as chairman and proceeded with the investigation. Among other-, the relator was summoned as witness for a specified date, failed to attend, was again summoned for another day and failed and refused to attend, whereupon an order of attachment and arrest was issued against him, signed by Seaman as chairman of this committee directed to Sheriff —— Carfer of Wood county, who duly took him into custody from which he is seeking hereby to be discharged.

Art. 5 of the constitution of West Virginia in a single section provides:

The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the power properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the legislature.

The 50 sections of art. 6, among other things, provide that the legislative power shall be vested in the senate and house of
37 delegates, fixes the number of each of these bodies, the term of office and the qualifications required of members, that the legislature shall meet at the seat of government "biennially and not oftener" unless convened by the governor in special session

under limitations set forth; that no session shall continue longer than forty-five days without concurrence of two-thirds of the members elected to each house and neither house, during a session, shall adjourn for more than three days without consent of the other; that a majority of the members elected to each house shall constitute a quorum; that attendance may be compelled; that each shall judge of the election returns and qualifications of its members, elect its presiding officers, appoint its officers and remove them at pleasure, punish its own members for disorderly conduct and by two-thirds vote expel once such member, then in section 26 it provides:

Each house shall have power to provide for its own safety, and the undisturbed transaction of its business, and may punish, by imprisonment, any person not a member, for disrespectful behavior in its presence; for obstructing any of its proceedings, or any of its officers in the discharge of his duties, or for any assault, threat or abuse of a member, for words spoken in debate. *But such imprisonment shall not extend beyond the termination of the session, and shall not prevent the punishment of any offense by the ordinary course of law.*

By section 45 of this article it is also further provided:—

It shall be the duty of the legislature, at its first session after the adoption of this constitution, to provide by law, for the punishment by imprisonment in the penitentiary, of any person who shall bribe, or attempt to bribe, any executive or judicial officer of this State, or any member of the legislature in order to influence him, in the performance of any of his official or public duties; and also to provide by law for the punishment by imprisonment in the penitentiary of any of said officers, or any member of the legislature, who shall demand, or receive, from any corporation, company or person, any money, testimonial or other valuable thing, for the performance of his official or public duties, or for refusing or failing to perform the same, or for any vote or influence a member of the legislature may give or withhold as such member.

Carrying out this constitutional requirement an act of the legislature of the State was approved April 1, 1873, (embodied in the Code of 1899, as section 5*a*, chap. 147) whereby it was made a felony for any one to bribe by directly or indirectly giving to or bestowing upon any executive or judicial officer or any member of the legislature, money, testimonial or thing of value, in order to influence him in the performance of any of his official or public duties, and also making it a felony for any executive or judicial officer to receive any money, testimonial or thing of value for such purpose, and further disqualifying any one convicted of either offense from ever holding any office of honor or trust in the State. The law prior to that time had been embodied in sections 4 and 5 of chapter 147 of the Code (*re*-enacted from sections 4 and 5 of chapter 194 of the Code of Virginia, 1860), which made these offenses misdemeanors of grave character.

Section 9 of article 4 of the constitution provides:

Any officer of the State may be impeached for mal-administra-

tion, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. The house of delegates shall have the sole power of impeachment. The senate shall have the sole power to try impeachments, and no person shall be convicted without the concurrence of two-thirds of the members elected thereto. When sitting as a court of impeachment, the president of the supreme court of appeals, or, if for any cause it be improper for him to act, then any other judge of that court, to be designated by it, shall preside; and the senators shall be on oath or affirmation, to do justice according to law and evidence. *Judgment in cases of impeachment shall not extend further than to remove from office, and disqualification to hold any office of honor, trust or profit under the State; but the party convicted shall be liable to indictment, trial, judgment and punishment according to law. The senate may sit during the recess of the legislature, for the trial of impeachment.*

Section 7, chapter 12 of the Code provides:

When the senate or house of delegates, or a committee of either house, authorized to examine witnesses, or to send for persons and papers, shall order the attendance of any witness, or the production of any paper as evidence, a summons shall be issued accordingly, signed by the presiding officer or clerk of such house, or the chairman of said committee, directed to the sheriff or other proper officer of any county, or the sergeant-at-arms of such house, or any person deputed by him. And when served, obedience thereto may be enforced, by attachment, fine or imprisonment; at the discretion of the house which appointed the committee; and if the committee be authorized to sit during the recess of the legislature or the recess of the house which appointed the committee, then obedience to the summons may be enforced by said committee as aforesaid.

39 These constitutional and legislative provisions, we believe, are all that can be considered as involved in the determination of the questions before us.

At the very threshold it may be asked whether the limitations of the constitution were not intended to, and do, substantially prevent legislative investigations through committees during the recess of the body itself. Its provisions expressly limit the sessions to biennial ones, not to exceed a total of forty-five days each, only to be extended by concurrent vote of two-thirds of the members of both houses. It fixes, by sec. 33, art. 6, a *per diem* compensation with mileage allowance, and then distinctly provides that no other allowance or emolument shall directly or indirectly be made or paid to the members of either house for postage, stationery, newspapers, or *any other purpose whatever*. It makes express provision that the senate may sit during recess for the trial of impeachment cases. Thus it will be seen that not by direct prohibition but by strong negative limitations, the appointment of legislative committees to sit during recess is condemned. It would seem clear that the framers of this constitution contemplated that the legislative duties should be performed

by the legislative body itself within a fixed period and for a fixed per diem compensation.

The wisdom of such limitation is clear; for otherwise the tendency of the legislature to resolve itself into committees to investigate one after the other the public institutions and other matters that would furnish plausible excuse during recess, whereby they might extend and increase their own compensation to any number of days short of the total involved in the recess, is very apparent.

However, in our view of this case, we do not deem it necessary to decide finally this point which would necessarily involve the constitutionality of a part of section 7, chap. 12 of the Code, which we have hereinbefore cited. It can far more appropriately be
40 left for the State courts construing its own constitution in its own way and in its own time, to do this.

There is a more grave and crucial question involved, which, if we entertain this writ, must be decided by us, however, and that is, whether under the constitution of West Virginia, the house of delegates had the power to constitute this committee for the purpose of investigating the matters set forth in its resolution, clothing it with power to sit in vacation, compel attendance of witnesses and to arrest and punish recalcitrant ones.

It would seem from the reading of art. 5, cited above, that the framers of the constitution determined jealously to guard the very fundamental principle, adopted in the National and all the State governments, whereby governmental power is to be divided into the three great departments, the executive, the legislative and the judicial, by plain, explicit and separate article. Not only does it divide the power among these three grand departments, but it explicitly provides that neither of these departments shall exercise the powers properly belonging to either of the others, and then proceeds in other articles to define the limitations and powers of each.

If we analyze rightly, the real object of this legislative investigation, was to ascertain whether or not Albert B. White, as governor of the State, had received or was to receive from Wm. M. O. Dawson any sum of money, or any division of fees or any other thing of value, directly or indirectly for and in consideration of his appointment by White as governor, to the honorable and lucrative office of secretary of state. This appointment under the constitution at that time existing, being said White's official duty to make. The second charge is of the same character. The governor could not "improperly" be connected with legislative action such as to warrant legislative investigation unless it was such as to warrant impeachment or prosecution.

41 For what purpose was this investigation to be made? Can it be said that it was a preliminary investigation instituted by the house of delegates for the purpose of securing informations and facts upon which to base its impeachment of the governor? Certainly not for this resolution was passed within nine days of the expiration of the term of said White as such governor by operation

of law on March 4th, 1905. It was passed less than three hours before the adjournment of the session of the legislature by constitutional limitation. It expressly provided that the investigating committee was to sit in vacation and it was expected to make its report to the next succeeding session long after the said White's term would have expired, and after an impeachment proceeding could be instituted against him, for art. 4 of the State constitution, quoted by us above, expressly limits the extent of impeachment to removal from office. Was the purpose of this resolution to ascertain the guilt or innocence of White and Dawson touching this charge so that the legislature might enter judgment and punish one or both if found by this investigation to be guilty? Such an effort would be a palpable and gross assumption of power on its part unwarranted, yes, expressly prohibited, by the constitution. If these charges were and are true, then both White and Dawson are guilty of grave and serious felonies; if false then they are the victims of cruel and criminal slander or libel. In either event the only tribunals under the constitution where these things can be legally investigated are the courts of the State. It is the solemn duty of certain officers of the State, elected for the purpose, to bring such charges before the grand juries having jurisdiction and full power is vested in the courts to compel not only this relator but any and all other witnesses to appear there and testify.

If this investigation was to be made solely for the vindication of these gentlemen charged, or to soothe the outraged feelings
42 of either or both, it is simply enough to say that legislatures are not elected for this purpose, but the courts are here the proper forums wherein damages may be sought and awarded for all such injuries. It would be a very remarkable spectacle indeed for Congress and legislatures of the States to conduct investigations for vindication purposes, at the expense of the people, in every instance where, in the heat of partisan debate, some charge of misconduct, malfeasance or violation of law is made against a public official, and extend such vindicatory investigation to such officials after they have filled their terms of office and passed into private life.

That this latter was the sole and only purpose for the creation of this committee and for the authorization of this investigation does not depend upon inference and implication alone. On the contrary, it appears positively and without any doubt. It originated with and was solely instigated by the governor himself. Its origin sprung from his special message sent to the house of delegates in which he set forth that the charges had been made by a member of the senate and printed broadcast in the newspapers; that the senate had investigated them and he and others had testified; that *he* was not satisfied (it is clearly to be inferred that the senate was); he admits that "*if guilty of these charges, or either of them, he ought to be found guilty and punished, either by impeachment, or an indictment and trial in court.*" The former he knew to be impossible, under the circumstances; the latter he knew could not be subject of legislative

action. He then reaches the erroneous conclusion, the *non sequitur*, that if innocent, he "had the right to have that fact declared (by legislative action) after full, free and thorough investigation, (by a single branch of the legislature where the charge did not originate and after the other branch where it did originate had investi-
gated, but not to his liking or entire satisfaction), and his
43 good name and that of his family vindicated." Thereupon this branch of the legislature passed the resolution providing for this committee, expressly setting out in the preamble thereto the special message requesting the investigation and expressly instructing the committee to be appointed only to "investigate fully and thoroughly the charges." This then was the sole purpose for the creation of this committee, as clearly appears, and such appearing disposes of the argument of counsel based upon the theory that this investigation was authorized in order to furnish the legislature with facts upon which to base future legislation.

It is true generally as contended for, that all inferences are to be made and all doubts solved in favor of the legitimacy of the legislative purpose and action, but not when it expressly appears by the act itself in positive terms that its purpose is illegitimate and contrary to constitutional limitations.

The principles we have here set forth are involved to a considerable extent in the leading case of Kilbourn *v.* Thompson, 103 U. S., 377, where Mr. Justice Miller, with great learning has discussed and defined the powers of and limitations upon the national House of Representatives in making similar investigations, only authorized to be made by the courts.

Let the prisoner be discharged.

Petition for Appeal and Assignment of Error.

(Filed July 1, 1905.)

Circuit Court of the United States for the Northern District of West Virginia.

In the Matter of C. T. CALDWELL.

Petition for Appeal and Assignment of Error.

The respondent, W. H. Carfer, sheriff of Wood county, prays an appeal to the Supreme Court of the United States from the judgment discharging the petitioner, C. T. Caldwell, solely upon the
44 question of the jurisdiction of this court, as a court of the United States, and assigns as error, that this court is without jurisdiction, because it is not alleged, and does not appear, that the petitioner was in custody under or by virtue of any authority of the United States, or in violation of the Constitution or of any law or

treaty of the United States, or that the petition or judgment discharging the petitioner is founded upon any matter which justifies the exercise of Federal authority, or which is necessary to the enforcement of any right of the petitioner under the Constitution, laws or treaties of the United States; and the respondent prays that said question of jurisdiction of this court as a court of the United States, be certified to the Supreme Court of the United States.

W. H. CARFER,
Sheriff of Wood County.
W. E. CHILTON, Att'y.

Appeal Bond.

(Filed July 1, 1905.)

Know all men by these presents, that we, W. H. Carfer, as principal, and W. E. Chilton, as sure*ties*, are held and firmly bound unto C. T. Caldwell in the full and just sum of three hundred dollars (300.00) to be paid to the said C. T. Caldwell, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 1st day of July in the year of our Lord one thousand *eight* hundred and *ninety*-five.

Whereas, lately at a circuit court of the United States for the northern district of West Virginia, in a suit depending in said court, between C. T. Caldwell, petitioner, and W. H. Carfer, sheriff of Wood county, West Virginia, respondent, a decree was rendered against the said W. H. Carfer, sheriff of Wood county, West Virginia, and the —

W. H. Carfer, sheriff of Wood county, West Virginia, having
45 obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said C. T. Caldwell citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the day in the said citation mentioned:—

Now, the condition of the above obligation is such, that if the said W. H. Carfer, sheriff of Wood county, West Virginia, shall prosecute his appeals to effect, and answer all damages and costs if he fail to make his plea good, then *and* above obligation to be void; else to remain in full force and virtue.

W. H. CARFER. [SEAL.]
W. E. CHILTON. [SEAL.]

Sealed and delivered in presence of—
L. B. DELLICKER.

Approved by—
ALSTON G. DAYTON,
Judge U. S. Dist. Court,
Northern Dist. of West Va.

And at another day, to-wit: on the 1st day of July, 1905, the following order was made and entered of record, to-wit:

Order Allowing Appeal.

In the Matter of C. T. CALDWELL. *Habeas Corpus.*

Upon consideration of the petition of the respondent for an appeal to the Supreme Court of the United States, now here filed, it is hereby certified that the question of the jurisdiction of this court as a court of the United States, was raised by the respondent at the hearing and was in issue; the respondent claiming that the court was without jurisdiction because it was not alleged and did not appear that the petitioner was in custody under or by virtue of any authority of the United States, or in violation of the Constitution or of any law or treaty of the United States, or that his petition was founded upon any matter which justified the exercise of Federal authority; and
46 said objection of the respondent to the jurisdiction of this court was overruled, and the petitioner was discharged for the reasons set forth in the written opinion filed herein; and the court hereby allows an appeal to the Supreme Court of the United States, solely upon said question of the jurisdiction of this court as a court of the United States to issue said writ and discharge the petitioner, upon the respondent giving bone in the sum of three hundred dollars, ($300.00) and said question of jurisdiction is hereby certified to the Supreme Court, and pending this appeal for special reasons shown the court, the said C. T. Caldwell is enlarged upon his own recognizance.

Citation.

47 UNITED STATES OF AMERICA, *ss:*

The President of the United States to C. T. Caldwell, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States holden at Washington on the 31st July next, pursuant to an appeal from a decree of the circuit court of the United States for the northern district of West Virginia in your favor passed in a cause in said court wherein C. T. Caldwell was petitioner and W. H. Carfer sheriff of Wood county West Virginia respondent and you are required to show cause, if any there be, why the judgment rendered against the said W. H. Carfer sheriff &c. in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller Chief Justice of the said Supreme Court of the United States this 1st day of July, in the year of our Lord one thousand nine hundred five.

{Seal Circuit Court United States, Northern District West Virginia, Parkersburg, West Va.}

ALSTON G. DAYTON,
Judge U. S. Dist. Court, Northern Dist. of West Va.

47½ On this 10th day of July, in the year of our Lord one thousand nine hundred and five, personally appeared L. V. G. Morris before me, the subscriber, and makes oath that he delivered a true copy of the within citation to C. T. Caldwell, at his office in the city of Parkersburg, West Virginia, on the 10th day of July, 1905.

L. V. G. MORRIS.

Sworn to and subscribed the 10th day of July, A. D. 1905.

{Seal of W. S. Allen, Notary Public, Wood County, West Virginia.}

W. S. ALLEN,
Notary Public for Wood Co., W. Va.

[Endorsed:] *In re* C. T. Caldwell. Citation.

48 UNITED STATES OF AMERICA, } ss:
Northern District of West Virginia, }

I, L. B. Dellicker, clerk of the circuit court of the United States for the northern district of West Virginia, hereby certify that the foregoing is a true and complete transcript of the record and proceedings of said court, *In re* C. T. Caldwell, upon petition for a writ of *habeas corpus*, lately pending therein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Parkersburg, in said district, this 10th day of July, 1905.

{Seal Circuit Court United States, Northern District West Virginia, Parkersburg, West Va.}

L. B. DELLICKER,
Clerk C. C. U. S., N. D. W. Va.

Endorsed on cover: File No. 19,862. N. West Virginia C. C. U. S. Term No. 360. W. H. Carfer, sheriff of Wood county, West Virginia, appellant, *vs.* C. T. Caldwell. Filed July 27th, 1905. File No. 19,862.